

UNITED STATES BANKRUPTCY COURT  
NORTHERN DISTRICT OF NEW YORK

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In re:

GREGORY ELIOPOULOS, f/k/a  
GREGORY G. GENO,

Debtor.

Chapter 7  
Case No.: 03-16950

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NORTHERN FEDERAL CREDIT UNION,

Plaintiff,

Adv. Pro. No.: 04-90063

v.

GREGORY ELIOPOULOS,

Defendant.

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APPEARANCES:

Anthony Inserra, Esq.  
*Attorney for the Debtor/Defendant*  
531 Washington Street, Suite 3401  
Watertown, New York 13601

Antonucci Law Firm  
*Attorneys for the Plaintiff*  
12 Public Square  
Watertown, New York 13601

David P. Antonucci, Esq.

Hon. Robert E. Littlefield, Jr., United States Bankruptcy Judge

**DECISION AND ORDER**

On May 5, 2005, after having given the plaintiff, Northern Federal Credit Union (the “Credit Union”), and its counsel, David P. Antonucci, Esq., an opportunity to answer and defend the court’s July 27, 2004 order to show cause entered pursuant to Federal Rule of Bankruptcy Procedure (“Bankruptcy Rule”) 9011(c)(1)(B) and 11 U.S.C. § 105 (the “July 2004 Decision”) (Dkt. No. 17), the court entered a Memorandum-Decision and Order finding violations of Bankruptcy Rule

9011(b)(1) and (3) by both the Credit Union and its counsel, and of Bankruptcy Rule 9011 (b)(2) by counsel (the “May 2005 Decision”) (Dkt. No. 42). The court concluded, *inter alia*, that sanctions must be imposed upon the Credit Union and its counsel, jointly and severally for the former violations and personally against Attorney Antonucci for the latter violation, in accordance with Bankruptcy Rule 9011(c)(2),<sup>1</sup> but it was unable to specify the amount because the Debtor’s attorney’s fees and other expenses incurred as a direct result of the violations were at that time unknown. To bring finality to the matter, the court directed the Debtor’s counsel to submit a detailed breakdown of the monetary amount sought by the Debtor as sanctions against the Credit Union and its counsel. Now that the parties have filed submissions on this limited issue, the only remaining question is whether the Debtor’s attorney’s fees and costs of \$17,342.20 are reasonable and “limited to what is sufficient to deter repetition of such conduct or comparable conduct by others similarly situated.” FED. R. BANK. P. 9011(c)(2).

The court retains jurisdiction of this core proceeding pursuant to 28 U.S.C. §§ 157(a), (b)(1), (b)(2)(J), and 1334(b).<sup>2</sup>

Because this matter has been the subject of prior decisions and orders, the court will not

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<sup>1</sup> The court limited sanctions in this matter to the Debtor’s attorney’s fees and costs; it declined to issue sanctions for the cost of judicial and administrative time incurred in processing the frivolous Complaint.

<sup>2</sup> Review of the docket in this proceeding shows that the Credit Union has taken three appeals: first, of the July 2004 Decision (*see Notice of Appeal*, Dkt. No. 19); second, of the court’s August 10, 2004 order dismissing the adversary proceeding with prejudice (Dkt. No. 20) (*see Notice of Appeal*, Dkt. No. 24); and third, of the May 2005 Decision (*see Notice of Appeal*, Dkt. No. 47). It is this court’s opinion that only the second appeal is proper because both the July 2004 and the May 2005 Decisions are interlocutory; this final decision with respect to issues arising under Bankruptcy Rule 9011 and 11 U.S.C. § 105 is required to invoke appellate jurisdiction. The District Court, however, will rule upon the appeals and this court will defer to those decisions. Presently, it suffices to note that the Credit Union and Attorney Antonucci have not moved for a stay pending appeal on either of the Decisions so as to prevent this court from continuing the sanctions matter. *See* FED. R. BANKR. P. 8005.

reiterate the factual background in detail. Familiarity with the relevant facts is assumed. The Debtor has requested attorney's fees in the amount of \$16,681.50, which his counsel has computed by multiplying 101.1 hours by his hourly rate of \$165, and costs in the amount of \$660.70, for a total award of \$17,342.20. (*See Attach. to Att'y Aff.*, Dkt. No. 46.) Counsel for the Credit Union has objected to the Debtor's fee application (*see* Dkt. No. 55), arguing, *inter alia*, that the time entries are not sufficiently detailed (*id.* ¶¶ 5–7), the time spent is excessive (*id.* ¶¶ 10, 12), and the time sheet improperly includes work done on other, non-related matters (*id.* ¶ 9).

It would be unnecessarily laborious to address each specific objection of the Credit Union; however, the court agrees to a limited extent with the Credit Union's general position. The primary purpose in imposing sanctions under Bankruptcy Rule 9011 is to deter future violations of the Rule. *See* FED. R. BANKR. P. 9011(c)(2). "The measure of sanctions under [the language of Bankruptcy Rule 9011] is not the actual fees and expenses incurred, but those that the court determines to be reasonable." *In re Cedar Tide Corp.*, 164 B.R. 808, 818 (E.D.N.Y. 1994) (citing *Jackson v. Law Firm of O'Hara, Ruberg, Osborne and Taylor*, 875 F.2d 1224, 1229 (6th Cir. 1989)). Factors to be considered when determining the appropriateness of a monetary sanction under Bankruptcy Rule 9011 include "whether the party to receive the award acted promptly to call the Rule 9011 violation to the court's attention and whether said party mitigated damages by avoiding unnecessary expenses in responding to papers that violated the rule." *In re Zinni*, 261 B.R. 196, 204 (B.A.P. 6th Cir. 2001) (citing *Jackson v. Law Firm of O'Hara, Ruberg, Osborne & Taylor*, 875 F.2d at 1230)). The court should also consider the attorney's ability to pay a monetary sanction. *Id.* (citation omitted). Whatever the sanction imposed, it must be "reasonable under the circumstances" and, taking into account that compensating an opposing party is a secondary purpose of the Rule, it must not

compensate the responding attorney beyond the time that he or she reasonably expended in replying to the sanctionable conduct. *In re Cedar Tide Corp.*, 164 B.R. at 818.

There is no contention of delay, inability to pay, or failure to mitigate damages in this case. Thus, to the extent the fees are reasonable, they will be awarded. The court begins with the premise that, because the Credit Union and Attorney Antonucci's conduct was so egregious and persistent even in the face of so many warnings, much of the fee requested by the Debtor's counsel will cross the threshold of reasonableness. With that in mind, the court turns to the specific time entries submitted by the Debtor's counsel.

The court initially shared Attorney Antonucci's concern over Attorney Inserra's March 18, 2004 entry for .8 hours to "Review Transcript of Adversary Complaint." Attorney Inserra has since clarified that the entry should have referenced his review of the Debtor's 2004 examination transcript (*Att'y Aff./Resp. to Objection to Time-Sheet* ¶ 11, Dkt. No. 56), which he deemed necessary for preparation of the Debtor's Answer in the adversary proceeding. In light of this correction, the court does not consider the entry to be improper.

This court, however, does not have jurisdiction to award attorney's fees for any services rendered by Attorney Inserra in connection with the appeals taken by the Credit Union. While the appeals may be so frivolous as to warrant additional sanctions over and above those imposed here, that determination can only be made by the District Court. The following entries, therefore, must be disallowed:<sup>3</sup>

8/25/04	Receipt/Review of Notices of Appeal	0.2	33.00
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<sup>3</sup> The court has made stylistic corrections to the entries but their substance remains unchanged.

8/31/04	Receipt/Review certification of compliance and attachments	0.3	49.50
9/3/04	Review appellate documentation filed by the Credit Union and begin research on the appeals	2.0	330.00
9/7/04	Receipt/Review of scheduling order for CV-1032	0.2	33.00
9/10/04	Draft and fax letter on adjournment request to David Antonucci and review correspondence received on the appeals	1.0	165.00
9/21/04	Receipt/Review of scheduling order for CV-1093	0.2	33.00
11/9/04	Telephone call to Clerk regarding status of Appellants' brief	0.3	49.50
11/11/04	Letter to Court regarding late submission of Appellants' brief	0.5	82.50
11/11/04	Receipt/Review of correspondence from David Antonucci regarding request to file a late brief	0.5	82.50
11/12/04	Receipt/Review of Court Decision regarding extension request	0.1	16.50
11/16/04	Receipt/Review of Appellants' briefs CV-1032 and CV-1093	3.0	495.00
11/18/04	Research for Appeals CV-1032 and CV-1093	6.0	990.00
11/30/04	Research and draft Appeals CV-1032 and CV-1093	6.0	990.00
12/7/04	Draft Appeals CV-1032 and CV-1093	6.0	990.00
12/9/04	Draft Appeals CV-1032 and CV-1093	6.0	990.00
12/14/04	Telephone call to client regarding status/	1.5	247.50
12/16/04	Draft Appeals CV-1032 and CV-1093	3.0	495.00
12/20/04	Finalize and submit Appeals CV-1032 and CV-1093	2.0	333.00

In sum, a total of 38.6 hours, or \$4,825, must be subtracted from the amount of the sanction requested.

Time entries and costs related to the O'Shaughnessy matter must also be disallowed.<sup>4</sup> They include:

9/28/04	Receipt/Review of hearing transcript; Telephone	2.5	412.50
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<sup>4</sup> See *In re O'Shaughnessy*, Case No. 03-17656, Adv. No. 04-90010, slip. op. (Bankr. N.D.N.Y. May 27, 2005) (addressing Attorney Antonucci's settlement of the Credit Union's 11 U.S.C. § 523 cause of action and dismissal of its 11 U.S.C. § 727 cause of action against the O'Shaughnessy's in violation of Bankruptcy Rule 7041). Attorney Inserra caused the case to be reopened and was substituted as counsel of record for the debtors in that action.

9/28/04	conference with Mr. O'Shaughnessy Pacer search and review of O'Shaughnessy's case for research on Eliopoulos case	0.5	82.50
9/30/04	Reviewed and sent O'Shaughnessy package to the Court	2.5	412.50
	Overnight charge for package		15.00

It is irrelevant that the O'Shaughnessy matter was researched and brought to the court's attention within the confines of this adversary proceeding. (*See id.* ¶ 15.) It does not relate to this adversary proceeding and, as such, it is being handled as a separate, independent matter. Accordingly, the Debtor's purported damages must be reduced by another 5.5 hours, or \$907.50, plus costs of \$15, for a total of \$922.50.

Lastly, the court has more general concerns that warrant a further reduction of the attorney's fees, post-modification, by 25%. While the court certainly can appreciate Attorney Inserra's contention that vast amounts of time were spent trying to decipher and respond to the bizarre positions taken by the Credit Union and its counsel, it cannot fully accept such general time entries as "[r]esearch and review case law," "[r]esearch memorandum of law," or "drafting memorandum of law," particularly when the time spent for each task ranges from one to four hours. The court is also unconvinced that the Debtor required monthly status updates, especially during periods of inactivity as shown on the docket. Moreover, none of the entries indicate who performed the task. Attorney Inserra has clarified that his own and his associate's billable rates in this matter are \$165. (*See id.* ¶ 8.) The court does not take issue with the rate charged; both attorneys have over fifteen years of litigation experience in state and federal courts, and even if the associate's rate is arguably high, it seems that Attorney Inserra's rate is either average or low for a principal of a law firm. Nonetheless, the individual who performed the work should be identified. For these reasons, the court believes further modification of Attorney Inserra's bill is warranted.

The court has carefully reviewed Attorney Inserra's travel expenses and other costs and, subject to the previously noted exception of \$15, it finds them to be reasonable under the circumstances. Specifically, the court rejects Attorney Antonucci's averments that the Debtor's counsel's itemized travel costs are inflated; travel should be billed at the full hourly rate since each hour en route to the courthouse on a frivolous matter is an hour lost that could have been spent on necessary client matters.

In sum, the court reduces the Debtor's requests for attorney's fees and costs by \$8,469.75 and \$15, respectively.<sup>5</sup> For the reasons discussed *supra*, the Debtor is awarded \$8,857.45, which is comprised of attorney's fees in the amount of \$8,211.75 and costs in the amount of \$645.70. Of this sum, the court attributes (a) 50% to Attorney Antonucci's Bankruptcy Rule 9011(b)(2) violation because, as the professional, he is primarily responsible for leading the charge against the Debtor; (b) 25% to the Credit Union and Attorney Antonucci's Bankruptcy Rule 9011(b)(1) violations; and (c) 25% to their Bankruptcy Rule 9011(b)(3) violations. Accordingly, a sanction of \$4,428.73 is to be paid by Attorney Antonucci, and the remaining sanction of \$4,428.72 is joint and several with the Credit Union.

Based on the foregoing, it is hereby

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<sup>5</sup>	16,681.50	[Requested fees]
-	<u>4,825.00</u>	[Appellate fees]
	11,856.50	
-	<u>907.50</u>	[O'Shaughnessy matter]
	10,949.00	
-	<u>2,737.25</u>	[25% reduction]
	8,211.75	
	 660.70	 [Requested costs]
	<u>15.00</u>	[O'Shaughnessy matter]
	645.70	

ORDERED, that Attorney Antonucci is sanctioned \$4,428.73 for his violation of Bankruptcy Rule 9011(b)(2), payable directly to Anthony Inserra, Esq.; and it is further

ORDERED, that the Credit Union and Attorney Antonucci are sanctioned \$4,428.72 for their violations of Bankruptcy Rule 9011(b)(1) and (3), payable directly to Anthony Inserra, Esq.; and it is further

ORDERED, that Attorney Antonucci and the Credit Union are to deliver the entire sum of \$8,857.45, of which \$4,428.72 is joint and several, to the office of Anthony Inserra, Esq., within thirty days from the date of this Decision and Order.

It is SO ORDERED.

Dated: August 23, 2005  
Albany, New York

/s/ Robert E. Littlefield, Jr.

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Hon. Robert E. Littlefield, Jr.  
United States Bankruptcy Judge